

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

**JASON SELIGMAN,** )  
Plaintiff, ) Case No. 7:04CV00044  
v. ) **OPINION AND ORDER**  
**DAVID I. TENZER, ET AL.,** ) By: James P. Jones  
Defendants. ) Chief United States District Judge

The plaintiff has filed a Motion to Dismiss and Reconsideration of Plaintiff's Motion for Continuance. In his motion, the plaintiff requests that the court allow him to dismiss his case without prejudice, or in the alternative, reconsider its prior oral order of June 17, 2005, denying his request to continue the jury trial now set to begin on July 12, 2005.

As a ground for both of the alternatives, the plaintiff contends that he needs addition time to prepare for trial. The implicit purpose of the voluntary dismissal would be to escape the current trial date and refile the action so as to engage in further discovery, which is now closed. In addition, the court presently has under advisement the defendants' motions for summary judgment and to exclude the testimony of the plaintiff's expert, which motions have been fully briefed and argued.

Obviously, a dismissal without prejudice would possibly allow the plaintiff to escape any adverse rulings on those motions.

I will deny the plaintiff's request that he be allowed to take a voluntary dismissal without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2), in order to permit further preparation of the case. It is pellucid that the defendants have incurred substantial time and expense in trial preparation and that the plaintiff has an insufficient explanation for his failure to move expeditiously in the pretrial stages of this case. The defendants should not be subjected to further delay and expense, particularly where the fault for any lack of preparation lies with the plaintiff. *See Teck Gen. P'ship v. Crown Cent. Petroleum Corp.*, 28 F. Supp. 2d 989, 993 (E.D. Va. 1998).

I will also deny the alternative motion for reconsideration. The plaintiff has shown no good cause for me to reconsider my previous ruling.

For these reasons, it is **ORDERED** that the Motion to Dismiss and Reconsideration of Plaintiff's Motion for Continuance is DENIED.

ENTER: June 23, 2005

/s/ JAMES P. JONES  
Chief United States District Judge